Ore-Ida Foods, Inc. *and* United Food & Commercial Workers Union, Local 73A, AFL-CIO-CLC, Petitioner. Case 30–RC-5484

March 31, 1994

DECISION AND DIRECTION OF ELECTION

By Members Stephens, Devaney, and Browning

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held on various dates in June and July 1993 before a duly designated hearing officer of the National Labor Relations Board. On August 6, 1993, pursuant to Section 102.67(h) of the Board's Rules and Regulations, this case was transferred to the National Labor Relations Board for decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully reviewed the entire record in this proceeding including the posthearing briefs filed by the Employer and the Petitioner in support of their respective positions, the Board makes the following findings.

- 1. The Board has reviewed the rulings of the hearing officer made at the hearing and finds that they are free from prejudicial error. They are affirmed.
- 2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
- 3. The labor organization involved claims to represent certain employees of the Employer.¹
- 4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
- 5. Ore-Ida Foods, Inc. (the Employer) is a Delaware corporation engaged in the processing and sale of potato products. The Petitioner seeks to represent a unit of all regularly scheduled full-time and part-time maintenance employees at the Employer's Plover, Wisconsin factory, excluding all production, professional and office clerical employees, fieldmen, guards, and supervisors as defined in the Act. The Employer takes the position that a maintenance only unit is inappropriate and that an appropriate unit must include both production and maintenance employees.

Organizational Structure and Operations

The Employer's Plover factory is part of the Ore-Ida Vegetable Group, one of several food production groups owned by the Employer, which also includes two other potato processing factories located in Oregon and Idaho. The Plover factory processes raw potatoes into over 60 different kinds of packaged food products for sale both to the general public and to restaurants and institutional food providers. The Employer employs approximately 838 employees at the Plover factory of whom about 751 are hourly production employees and approximately 69 are maintenance employees.

The Plover factory has three processing areas, or production lines: the "P-I" and "P-II" lines which produce a variety of frozen fried potatoes and the "P-III/Celestial" line, which produces packaged frozen baked potatoes.

The P-I and P-II production lines begin operation when the Employer's field operations deliver potatoes to the initial processing area in the south end of the factory. The potatoes are then sorted and sized for processing and conveyed by water through tubes to the main factory area, where they are once again sorted and then trimmed. At this point, they are moved to cutting operations where a cutter machine cuts the potato to the size specifications of the particular Ore-Ida product in production that day. The P-I and P-II production lines switch from product to product depending on the Employer's needs. After cutting, the potatoes are blanched and then fried. The final processing step is freezing the potatoes by conveying them through freezer tunnels. The product then moves to a packaging line to be packaged and then stored in a warehouse. The warehouse is operated by a separate employer.

The Employer's third production line, the P-III/Celestial, operates in a similar fashion except that the production process bakes potatoes instead of cutting and frying them. This operation essentially removes the interior "meat" for seasoning and then stuffs the seasoned potato back into the potato skin. The potato is then frozen, packaged, and stored as in the P-I and P-II production lines.

Production employees work in three 8-hour shifts, day, swing, and graveyard. The employees operating the processing machinery start at 7 a.m., 3 p.m., and 11 p.m.; the shifts for employees operating the packaging machinery begin 1 hour later.

The technology support department is composed of various functions which support the production lines: quality assurance, maintenance, field, sanitation, dry storage, and stockroom/MRO. The maintenance employees are divided into four groups. Three of these groups have work hours which correspond to the three production shifts for processing employees. The fourth group, the utility group, maintains the factory structure and its nonproduction equipment.

Each maintenance worker in all four groups specializes in a specific skill area: electronics technicians, electricians, mechanics, boiler and refrigeration operators, mobile equipment mechanics, service mechanics,

¹The Employer has stipulated to the Petitioner's status as a labor organization.

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and machinists. Boiler and refrigeration employees operate boilers, refrigeration compressors, freezer tunnels, air compressors, air compressor filters and dryers, and condensers. They also maintain this equipment.

The maintenance employees assigned to one of the three shift groups (as opposed to the utility group) spend their time, according to their positions, responding to requests for assistance on the factory floor, performing preventive maintenance checklists, and completing repairs and documentation in their assigned bench areas or shops. The bench areas are located in the factory building, but apart from the production lines. Maintenance employees are on call during their shift to exercise their skills in their area of specialty throughout the factory.

Dennis Swearingen, the manager of the technical support department, estimated that, in all, the maintenance department workload in the three shift groups consists of 25–35 percent responding to work orders, which are requests for repairs by production employees; 15–20 percent on preventive maintenance (such as replacing machine parts or lubricating machines according to a computerized timetable); and the (approximately) remaining 50 percent on 'line walking,' (responding to machinery breakdowns and other immediate problems or simply making visual inspections of the production machinery in order to spot developing problems).

Later in his testimony, Swearingen gave specific time breakdowns for the various skills. He estimated that electronics technicians spend 50-70 percent working in production areas, responding to work orders, and performing preventive maintenance. The remainder of their time is spent on repair and documentation in their assigned bench area. Electricians spend 60-70 percent of the workday in the plant, making electrical repairs to the production machinery or to the electrical circuits controlling the factory's lighting and machinery. Their bench work consists of repairing electric motors and gear boxes. Packaging mechanics perform 50-70 percent of their work in the packaging areas, responding to work orders and following preventive maintenance schedules. Processing mechanics spend a similar amount of time in the processing area. The boiler and refrigeration operators spend 75 percent of their time operating the controls (located in a separate area on the main floor) for the boilers and the freezer tunnels. The rest of their time is spent performing maintenance repairs on the equipment during "defrost" periods, or downtime.

The fourth maintenance group, the utility group, has a more varied set of functions than the other three groups. A utility machinist spends almost all of his worktime in the machine shop performing lathe work and milling. The utility electrician performs all electrical maintenance work not related to production lines. Although he works out of a separate service building (located to the south of the main building), he spends 75 percent of his time away from that building, performing work in the production facility and other outlying buildings. Three mobile equipment mechanics service all factory mobile equipment, such as forklifts, trucks, and harvesting equipment. The mobile equipment mechanics spend half of their time in the truck shop (located in the water-treatment building, which is south of the main building) and the rest in other areas of the factory, including the potato loading dock. Eight service mechanics repair the heavy equipment that moves and stores the raw potatoes, and they also perform building maintenance (with some overlap with the mobile equipment mechanics). They also divide their time between the truck shop and the factory areas.

Wages, Benefits, and Work Rules

All hourly employees at the Plover factory have common fringe benefits (health and life insurance, retirement/savings plan, stock purchase plan, and tuition aid) and uniform wage rates and grades and are subject to the same work rules. Among the hourly factory employees, however, maintenance workers earn the highest hourly wage. The Employer's pay system is based on a grade system ranging from grade 1, \$8.89 per hour, to grade 10, \$14.77 per hour. Edward Guzik, the Employer's manager of human resources, testified that most manufacturing jobs fall within grades 1-8 and most maintenance jobs in grades 9-10 (the entry grade for a maintenance position is grade 8). There are only two maintenance jobs below the grade 8 entry level and only one nonmaintenance position in grade 9.

Various common conditions of employment apply to all hourly production and support employees: continuous service requirements; hours of work; rest and relief periods; scheduling of overtime and plant cleanup duties; compensation (including premium pay situations); holidays; vacation eligibility and pay; attendance bonus; leaves of absence; attendance and tardiness; recalls and layoffs; shift preference; job displacement; general work rules; safety regulations; sanitation; performance improvement process; and employee grievance procedure. Applicants for all jobs complete the same application forms and, once hired, use the same personnel forms for drug and alcohol screening and requests for leave. Maintenance and production employees also serve together on several committees and training programs.

Supervision/Discipline

Maintenance employees are separately supervised from production employees. Each of the four groups of maintenance employees has a supervisor, who reports to the maintenance superintendent, who in turn reports to the technology support manager. Maintenance supervisors work from offices located in production work areas. Production workers are supervised directly by production "lead workers" or foremen who, in turn, report to a production supervisor.

Production supervisors, however, give directions to maintenance employees by requesting them to correct a malfunction or perform a needed repair on the production machinery. For example, production supervisors inform maintenance employees when to perform a "changeover" on the production machinery (i.e., changing the settings on the machinery in order to produce another potato product). In addition, production supervisors prioritize maintenance work in order to minimize the effect on production.

The Employer's employment manual provides for a system of progressive discipline involving initial warnings, written warnings, suspension, and discharge. Lead workers initiate discipline for production employees; supervisors do so for maintenance. A maintenance supervisor, however, testified that he reported poor work performance by production employees to production supervisors, and on one occasion he received from a production supervisor a report of infractions by maintenance employees. In both cases, however, the maintenance and production supervisors possessed independent knowledge regarding their employees' improper work performance.

Skills and Contact

Production workers perform a variety of tasks which are also performed by maintenance workers. These tasks include adjustment of chains and belts on the conveying system and the timing and control of certain packaging machines; unjamming the automatic case packers and the air pumps which push the product; and changing certain parts such as the potato cutter heads, and springs on the sealing jaws on the polyurethane machine. Production operators also change electronic circuit boards, in order to resolve problems quickly, although this task is usually performed by electronic maintenance employees.

Production employees often assist maintenance employees in various tasks, mostly by lending an "extra hand" in lifting equipment. For example, during product "changeovers" (when production lines are being modified), production employees assist maintenance employees by handing equipment to the maintenance employees and helping them in lifting parts of the machinery. Production employees also assist maintenance employees in adjusting belt tension or in changing belts.

However, one production worker testified that the production workers generally do not help maintenance workers, because they are not supposed to get dirty. A processing worker testified that she never attempted to correct machine problems on her own. A processing maintenance employee testified that "[it's] our job to get greasy and do the hard stuff" and that the production people mainly assist the maintenance worker by moving parts out of his way or handing him tools as he works.

Despite the above-described common tasks and assistance, maintenance employees normally perform highly skilled tasks which the production operators do not and cannot perform.² This skill level differential is reflected in the fact that maintenance employees are now required to participate in an apprenticeship program. Three years ago, the Employer instituted an apprenticeship program for maintenance employees. In conjunction with the State of Wisconsin Department of Labor, Industry and Human Relations, Department of Apprenticeship Standards, the Employer devised a program in which maintenance employees could take training classes at a local technical college in certain areas. Newly hired employees are now required to enter an apprenticeship program. Current maintenance employees have to enter the program in order to move from one classification to another. At this time, 23 maintenance employees are currently training as apprentices in the program. Five maintenance employees have completed the apprenticeship requirements and are qualified as journeymen. The remaining 41 employees are not currently in the program, although Swearingen notes that some of these individuals may be waiting for a slot in the program.

Interchange and Transfer

Approximately 23 of the current complement of maintenance employees originally started as production employees. There is no evidence concerning transfers from maintenance positions to the lower-paying production positions. Although there is a single plant seniority list, in practice, current maintenance job openings are posted first within the maintenance department. Openings are posted on a plantwide basis only after all maintenance workers have declined the opportunity. There is no parallel posting system for production employees.

The Employer has a designated number of training hours for all employees, in both production and support. This training includes both training to enhance the employee's skill in his own job area and "crosstraining," i.e., training to qualify persons for other job openings. However, a nonmaintenance employee can cross-train for a maintenance position only if there is

²Certain situations, however, are even beyond the skill of the maintenance employees, such as tasks involving high voltage or welding of high pressure containers. In these circumstances, the Employer hires outside contractors to perform the work.

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an opening in the appropriate apprenticeship program for the maintenance position.

In addition, during shutdown periods when the maintenance employees perform maintenance work, the Employer assigns a few production employees to work temporarily as maintenance assistants, thereby allowing them to avoid being laid off for the duration of the shutdown.

Miscellaneous

A few production workers in the packaging areas wear brown uniforms and some of the processing operators wear white smocks. All maintenance employees wear blue uniform shirts. The Employer provides most employees, both in production and support, with hard hats as well as any appropriate protective equipment needed by an employee to perform specialized tasks. Maintenance employees, because of their repair function, are more likely to wear safety equipment. For example, a processing maintenance employee testified that he wears steel-toed boots, safety glasses, welding gloves, and a welding jacket.

Both production and maintenance employees have the use of common facilities such as plant entrances, parking lots, lunchrooms, locker rooms, timeclocks, and restrooms. Furthermore, both line operators and other production employees obtain items from a stockroom staffed by stockroom/MRO attendants. In addition, the Employer issued Plover Employment Manual applies to all hourly employees.

Analysis

The Employer asserts that a maintenance unit is not appropriate because the maintenance employees are not a distinct and homogeneous group of employees with interests separate from those of production employees. Furthermore, the maintenance employees share a close community of interest with the production employees so as to make a combined production and maintenance unit the only appropriate unit.

It is Board policy, as set forth in American Cyanamid Co., 131 NLRB 909 (1961), to find separate maintenance department units appropriate in the absence of a more comprehensive bargaining history, where the facts of the case demonstrate that the maintenance employees involved have the requisite community of interest. In determining whether a sufficient separate community of interest exists, the Board examines such factors as mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. Franklin Mint Corp., 254 NLRB 714, 716 (1981). Contrary to the Employer's assertions, we find that the manufacturing operations described here are not so highly integrated as to destroy the maintenance employees' identity as a separate and distinct function.

The Employer's maintenance employees are in a separate departmental section with their own supervisors. Although production supervisors have 'ordered' maintenance workers to fix a problem with the machines, these incidents do not establish common supervision. Instead, they are better characterized merely as an identification by production personnel of what repairs are needed to be done by maintenance personnel. Although there have been incidents in which production supervisors have reported infractions by maintenance employees and vice versa, there is no evidence that production or maintenance supervisors have the authority to discipline or to effectively recommend discipline of employees outside their own departments.

The maintenance employees are also highly skilled. Many classifications are traditional craft positions.³ Moreover, in contrast to production employees, the Employer requires that new maintenance hires/transfers or current maintenance employees desirous of promotion enter and complete an appropriate craft apprenticeship program. In addition, the maintenance employees perform most of the Employer's maintenance work—both work involving the production machinery and work on the plant infrastructure. The greater skill of the maintenance employees is also reflected in the fact that their wages are clustered at the two highest wage rates paid by the Employer. In Phillips Products Co., 234 NLRB 323 (1978), although the maintenance positions shared wage rates, fringe benefits, and conditions of employment with the production employees, the Board found a separate maintenance unit to be appropriate because, inter alia, the maintenance positions commanded the highest wages among the hourly employee positions.

Although many of the Employer's maintenance employees come into contact with production employees on the production floor, some maintenance employees have more limited contact. For example, there is very little contact between the maintenance utility group

³ The maintenance employees as a group, however, are not craft employees as that term is normally used by the Board, nor does any party assert that they possess craft status. There are a number of Board cases which have emphasized the possession of craft status in finding a maintenance only unit to be appropriate. See Proctor & Gamble, 251 NLRB 492, 494 fn. 11 (1980), and cases cited therein. As indicated above, however, skill level is only one factor to be considered in determining the appropriateness of a separate maintenance unit. Moreover, the Board has more recently found unskilled maintenance employees to constitute a separate appropriate unit in service industries where the employees were separately supervised, possessed skills unique to their classification, earned the highest hourly wage, were assigned work under a unique work order system, and where transfers were infrequent. See, e.g., Maxim's de Paris Suite Hotel, 285 NLRB 377 (1987); Omni International Hotel, 283 NLRB 475 (1987). In these cases, a separate unit was found appropriate despite some degree of functional integration.

and the production employees, because the utility employees work out of separate shops and do not perform repairs on production equipment. Other maintenance employees, such as boiler and refrigeration operators, also work in separate areas and thus do not have much contact with production employees. In fact, all maintenance employees when working in their assigned bench areas work separate and apart from production employees. In addition, although production workers often assist maintenance workers in repairing the machinery, they do so mainly by "lending a hand" to the maintenance employees, i.e., handing equipment, lifting machinery, or performing minor tasks. Such work is unskilled and peripheral to the actual repair work performed by the maintenance workers. See American Cyanamid Co., supra at 910. In Phillips Products Co., supra at 323, the Board found a unit of maintenance and repair employees appropriate despite assistance of this kind and the performance of minor machine maintenance by the operators, noting that "basically the production employees do not perform skilled maintenance work and the maintenance employees do not engage in production."

Finally, while the maintenance employees' "line-walking" involves substantial interaction with production employees, the Board has found separate maintenance units appropriate despite the presence of such interaction. *Mobay Chemical Corp.*, 225 NLRB 1159 (1976); *Crown Simpson Pulp Co.*, 163 NLRB 796 (1967). In particular, the Board has noted that sporadic assistance between the two sets of employees of this kind reflects "a spirit of cooperation or civility" rather than an overlap of job functions." *Maxim's de Paris Hotel*, supra at 378, quoting *Omni International Hotel*, 283 NLRB 475 (1987).

The differences in jobs and skills are also reflected in the limited nature of the interchange between production and maintenance employees. While 23 of the maintenance employees originally worked as production employees, the Employer's current apprenticeship requirement for maintenance positions (especially in combination with the job posting system for maintenance positions) acts as a strong barrier against permanent transfers from production to maintenance, essentially requiring production employees like new hires to wait for a slot or to upgrade their skills before allowing them to transfer to maintenance.4 The Employer's practice of hiring a few production employees to serve as maintenance assistants during plant shutdowns is also insufficient to establish any meaningful temporary interchange. Not only is this practice unpredictable and sporadic, but the production employees' role in the maintenance process when filling these positions is merely to perform menial tasks and not to perform any of the regular maintenance work. Thus, in effect, there is no temporary interchange between production and maintenance.

Based on our application of the factors discussed above to the record evidence in this case, we find that the Employer's maintenance employees comprise a distinct, separate, and cohesive grouping of employees appropriate for collective-bargaining purposes. The maintenance work performed by these employees requires a high level of skill in contrast to production work, which is relatively routine. While this work requires that some maintenance employees have extensive contact with, and, at times the assistance of, the production employees, this assistance is incidental to the work regularly performed by the maintenance employees. See Phillips Products Co., supra, 234 NLRB at 324, quoting American Cyanamid Co., supra, 131 NLRB at 910. In addition, reflective of the maintenance employees' greater skill is the fact that there is virtually no temporary interchange.

Cases relied on by the Employer in which a separate maintenance unit was found inappropriate are distinguishable. For example, in Peterson/Puritan, Inc., 240 NLRB 1051 (1979), the Board found inappropriate a unit of line mechanics where the mechanics shared common benefits with the production employees and worked, exclusively, at their assigned production line positions. More significantly, the line mechanics were not highly skilled. They were not required to possess any previous experience or formal training and their work consisted of adjusting machines and performing minor production line repairs. Even more critical was the fact that the line mechanics constituted only part of the employer's maintenance employees; there were eight additional engineering/maintenance employees who performed major repairs, installed machinery, and restructured production lines.

Similarly, in *Chromalloy Photographic*, 234 NLRB 1046 (1978), the Board found inappropriate a separate unit of camera repair and maintenance department employees in the employer's photography plant. In that case, the Board relied not only on the high degree of functional integration in the employer's operations, but also on the fact that the skill level of these employees did not differ greatly from that of other employees—there was no formal training or apprenticeship program—and the functions they performed were also performed to a substantial degree by the employer's quality control employees and machine shop employees.

F. & M. Schaefer Brewing Co., 198 NLRB 323 (1972), and U.S. Plywood-Champion Papers, Inc., 174 NLRB 292 (1969), are also distinguishable. In F. & M. Schaefer, maintenance employees were assigned to locations throughout the production areas; they possessed

⁴In any event, it is well established that permanent transfers weigh less heavily than temporary interchange in assessing the community of interest shared by maintenance and production employees. *Franklin Mint Corp.*, supra, 254 NLRB at 716.

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little skill and consequently production and maintenance employees performed similar maintenance functions; and when maintenance employees were on the production floor, they were supervised by production foremen who not only directed their work but also possessed disciplinary authority. In *U.S. Plywood-Champion*, production and maintenance employees also worked together performing similar maintenance functions and, in addition, maintenance employees frequently filled in for production employees.

Appropriate Unit

Accordingly, based on the foregoing, we find the following employees constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

All regular scheduled full-time and part-time maintenance employees at Ore-Ida Foods, Inc. at 1701 Highway 54 West, Plover, Wisconsin 54467 excluding all production, professional and office clerical employees, fieldmen, and seasonal employees, guards and supervisors as defined in the Act.

[Direction of Election omitted from publication.]